In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-864

JOHN J. WILLIAMS, SR., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES

After a jury-waived trial in the United States District Court for the District of Delaware, petitioner was convicted, along with 14 co-defendants, of conspiring to conduct an illegal gambling business involving five or more persons (18 U.S.C. 1955). He was sentenced to 18 months' imprisonment and was fined $5,000. The court of appeals affirmed in a judgment order (Pet. App. A25-A26).

The evidence showed that petitioner was the central banker of a gambling operation functioning in the Wilmington, Delaware, area between January and May of 1972. Petitioner's only contention is that Wharton's Rule precludes a conviction for conspiracy to conduct a gambling business in violation of Section 1955. As he correctly points out, the applicability of Wharton's

Rule to Section 1955 is currently before this Court in *Iannelli* v. *United States,* No. 73-64, certiorari granted, May 28, 1974.

Iannelli differs from the present case in that the defendants there were charged, convicted, and punished for both a substantive violation of Section 1955 and a conspiracy to commit it, whereas petitioner was charged, convicted, and punished only for conspiring to violate the statute. Even if the Court were to rule in *Iannelli* that cumulative punishment for a conspiracy and a substantive violation of Section 1955 is impermissible, that would not invalidate petitioner's sentence for conspiracy alone.

As we explained in our brief in *Iannelli* (see pp. 44-53), however, the petitioners in that case implicitly contend that Wharton's Rule bars any prosecution for a conspiracy to violate Section 1955.[1] The Court may therefore wish to defer disposition of the present petition pending the decision in *Iannelli* and then to dispose of it in accordance with that decision.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

FEBRUARY 1975.

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[1]We have sent petitioner's counsel a copy of the government's brief in *Iannelli.*